

## Wage and Hour Division, Labor

## §519.4

the Fair Labor Standards Act. The statutory definition is interpreted in part 780 of this chapter.

(e) *Student hours of employment.* Student hours of employment means hours during which students are employed under full-time student certificates issued under this part and is distinguished from *hours of employment of students*.

(f) *Employer.* Section 519.4 permits an agricultural or retail or service establishment employer to employ not more than six full-time students at subminimum wages on forwarding an application but before certification. For this purpose, the term *employer* looks to the highest structure of ownership or control, and hence may be more than a single retail or service establishment or farm, *e.g.*, the controlling conglomerate or enterprise would be the *employer*. With respect to public employers who operate retail or service establishments (see 29 CFR part 779), the *employer* means the highest structure of control such as the State, municipality, county or other political subdivision.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977; 43 FR 29000, July 5, 1978]

### §519.3 Application for a full-time student certificate.

(a) Whenever the employment of full-time students working outside of school hours in agriculture or in a retail or service establishment at wages lower than the minimum applicable under section 6 of the Fair Labor Standards Act is believed to be necessary to prevent curtailment of opportunities for employment and employment of them will not create a substantial probability of reducing the full-time employment opportunities of the other workers, an application for a certificate may be filed by their employer with the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers). Such application shall be signed by an authorized representative of the employer.

(b) The application must be filed in duplicate on official forms or exact copies thereof. The forms are available at the offices mentioned in paragraph (a) of this section. The application must contain the information as to the type of products sold or services rendered by the establishment, hours of employment during the preceding twelve-month period or data from previous certificates (or applications) as pertinent to the application, and other information for which request is made on the form.

(c) Separate application must be made for each farm or establishment in which authority to employ full-time students at subminimum wage rates is sought.

(d) Application for renewal of a certificate shall be made either on the same type of form as is used for a new application or on an alternate official form. No certificate in effect shall expire until action on such an application shall have been finally determined, provided that such application has been properly executed, and is received by the office specified in paragraph (a) of this section not less than 15 nor more than 30 days prior to the expiration date. A properly executed application is one which fully and accurately contains the information required on the form, and the required certification by an authorized representative of the employer.

### §519.4 Procedure for action upon an application.

(a) Under certain conditions, an agricultural or retail or service establishment employer may obtain temporary authorization to employ full-time students at subminimum wages. These conditions are: (1) Attestation by the employer that he/she will employ no more than six full-time students at subminimum wages on any workday and that the employment of such students will not reduce the full-time employment opportunities of other persons, and (2) forwarding a properly completed application to the Wage and Hour Division not later than the start of such employment, and (3) posting a notice of such filing at the place(s) specified in paragraph (a) of §519.6 of this subpart, and (4) compliance during

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the temporary authorization period with the requirements set forth in paragraphs (b) and (j) through (o) of §519.6 of this subpart.

(b) Temporary authorization under the conditions set forth in paragraph (a) of this section is effective from the date the application is forwarded to the Wage and Hour Division in conformance with §519.3 of this subpart. This authorization shall continue in effect for one year from the date of forwarding of the application unless, within 30 days the Administrator or his/her authorized representative denies the application, issues a certificate with modified terms and conditions, or expressly extends the 30-day period of review.

(c) Upon receipt of an application for a certificate, the officer authorized to act upon such application shall issue a certificate if the terms and conditions specified in this subpart are satisfied. To the extent he/she deems appropriate, the authorized officer may provide an opportunity to other interested persons to present data, views, or argument on the application prior to granting or denying a certificate.

(d) Until April 30, 1976, if a certificate is issued, there shall be published in the FEDERAL REGISTER a general statement of the terms of such certificate together with a notice that, pursuant to §519.9, for 45 days following such publication any interested person may file a written request for reconsideration or review. Thereafter, applications and certificates will be available for examination in accordance with applicable regulations in Washington, DC, and in the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah Area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers) for establishments in its area. A period of 60 days will be provided after certificate issuance during which any interested person may file a written request for reconsideration or review.

(e) If a certificate is denied, notice of such denial shall be sent to the employer, stating the reason or reasons for the denial. Such denial shall be

without prejudice to the filing of any subsequent application.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977]

### §519.5 Conditions governing issuance of full-time student certificates.

Certificates authorizing the employment of full-time students at subminimum wage rates shall not be issued unless the following conditions are met:

(a) Full-time students are available for employment at subminimum rates; the granting of a certificate is necessary in order to prevent curtailment of opportunities for employment.

(b) The employment of more than six full-time students by an employer will not create a substantial probability of reducing the full-time employment opportunities for persons other than those employed under such certificates.

(c) Abnormal labor conditions such as a strike or lockout do not exist at the farm or establishment for which a full-time student certificate is requested.

(d) The data given on the application are accurate and based on available records.

(e) The farms or establishments on whose experience the applicant relies meet the requirements of paragraph (h) of §519.6.

(f) There are no serious outstanding violations of the provisions of a full-time student certificate previously issued to the employer, nor have there been any serious violations of the Fair Labor Standards Act (including Child-Labor Regulation No. 3 and the Hazardous Occupations Orders published in part 570 of this chapter) which provide reasonable grounds to conclude that the terms of a certificate may not be complied with, if issued.

(g) The subminimum wage rate(s) proposed to be paid full-time students under temporary authorization or under certificate is not less than 85 percent of the minimum wage applicable under section 6 of the Act.